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City Clerk
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

EXEMPT FROM FILING FEES CAL. GOV'T CODE § 6103

(Space above this line for Recorder's use)

EXEMPT RECORDING REQUEST PER
GOVERNMENT CODE 27383

AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

BETWEEN

HOAG MEMORIAL HOSPITAL PRESBYTERIAN

AND

THE CITY OF NEWPORT BEACH

*(Pursuant to California Government Code Sections 65864-65869.5
and Newport Beach Municipal Code Chapter 15.45)*

**Approved May 13, 2008
Ordinance No. 2008-10**

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**Approved May 13, 2008
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AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5

(Hoag Memorial Hospital Presbyterian)

THIS AMENDMENT TO RESTATED DEVELOPMENT AGREEMENT NO. 5 ("Amendment") is entered into and effective on the date it is recorded with the Orange County Recorder (the "Effective Date") by and between the City of Newport Beach (hereinafter "City") and Hoag Memorial Hospital Presbyterian (hereinafter "Hoag").

RECITALS

1. The "RECITALS" to the Restated Development Agreement are amended to add new Sections 1.9 through Section 1.19(f) to read as follows:

1.9 Hoag Property. Hoag is the fee owner of approximately 38 acres of real property located in the City divided between the Upper Campus and the Lower Campus and more particularly described in Exhibit "A" and depicted on Exhibit "B" (the "Property").

1.10 Hoag Healthcare Services. Hoag is a modern, state-of-the-art acute care, not-for-profit hospital providing a comprehensive mix of healthcare services to treat virtually any routine or complex medical condition. Hoag features centers of excellence that include Hoag Cancer Center, Hoag Heart and Vascular Institute, Hoag Neuroscience Institute, Hoag Orthopedic Services and Hoag Women's Health Services, as well as advanced medical programs in many other specialties.

1.11 Hoag Community Benefit Programs. In addition to providing state-of-the-art hospital, diagnostic imaging and emergency room care medical services, Hoag is involved in many other community benefit programs such as police and SWAT team, fire department and paramedic support services, designating the City as the point of sale for major hospital equipment purchases and construction projects, providing financial and transportation support for the City's senior Oasis Center, and providing methane gas flare burnoff to mitigate methane gas fumes along Pacific Coast Highway. Hoag's community medicine program allocates approximately \$10 million annually toward improving the community's overall health, primarily through disease prevention and wellness and health promotion, especially for those vulnerable and disadvantaged populations.

1.12 EIR No. 142 and P.C. Text. On May 26, 1992, the City Council of City ("City Council") certified the Hoag Hospital Master Plan Final EIR No. 142 and adopted the Hoag Memorial Hospital Presbyterian Master Plan ("Hoag Master Plan") and the Planned Community Development Criteria and District Regulations ("P.C. Text") setting forth the development standards and terms and conditions by which the Property may be developed, including the maximum permissible building area, building height limits and permitted land uses.

1.13 Square Footage of Buildable Area. Under the existing Hoag Master Plan and P.C. Text, the Property allows a total of 1,343,238 square feet of buildable area with 577,889 square feet allocated to the Lower Campus and 765,349 square feet allocated to the Upper Campus.

1.14 Development Agreement No. 5. On May 26, 1992, the City Council adopted Ordinance No. 92-4 approving Development Agreement No. 5 between the City and Hoag incorporating the Hoag Master Plan and P.C. Text and granting vested rights to Hoag to develop the Property pursuant to the Hoag Master Plan and P.C. Text for the term of the Development Agreement. The Development Agreement was recorded in the Official Records of Orange County, California on August 4, 1993 as Instrument No. 63-0522236.

1.15 Restated Development Agreement. On February 14, 1994, the City Council of City adopted Ordinance No. 94-8 approving an Amendment and Restatement of Development Agreement No. 5 ("Restated Development Agreement") incorporating certain provisions clarifying the role, review and approval authority of the California Coastal Commission for development of the Property to ensure consistency and compliance with the California Coastal Act. The Restated Development Agreement was recorded in the Official Records of Orange County, California on March 23, 1994 as Instrument No. 94-0207276.

1.16 First Amendment to P.C. Text. On August 13, 2002, the City Council adopted Ordinance No. 2002-17 approving the First Amendment to the P.C. Text to provide that certain non-occupied building areas are not counted towards the maximum permissible building floor areas for development of the Property.

1.17 Noise Limitation. The existing PC Text provides that noise generated from Hoag Hospital from new mechanical appurtenances shall not exceed 55 dBA at the Property lines. This noise limitation was established prior to the adoption of the City's

Noise Element in the General Plan and Noise Ordinance. It is proposed that noise generated and originating from the Property be governed by the City Noise Ordinance with certain exceptions.

1.18 Noise Attenuation. Hoag has taken significant actions to attenuate noise generated from mechanical equipment and has installed landscape screening and walls to mitigate and buffer noise and improve aesthetic impacts for adjacent residential properties.

1.19 Restated Development Agreement Amendments. The City and Hoag propose to further amend the Restated Development Agreement by this Amendment to incorporate references to: a Supplemental EIR; an amendment to the City General Plan; an increase in the Public Benefits; designation of the City as the point of sale to the extent allowed under applicable law; and amendments to the Hoag Hospital Planned Community Text ("P.C. Text") to, among other things:

(a) eliminate the reference to 1.0 Floor Area Ratio ("FAR") for the Upper Campus and the .65 FAR for the Lower Campus in the General Plan Land Use Element. In place of the reference to the FAR's, an absolute maximum allowable building area of 1,343,238 square feet will remain available for development of the entire Property comprised of the Upper Campus and the Lower Campus;

(b) maintain a cap under the General Plan Land Use Element Amendment for development of the Lower Campus at 577,889 square feet (if no square footage is reallocated) and establish a cap on development of the Upper Campus at 990,349 square feet (if all 225,000 square feet are reallocated from the Lower Campus to the Upper Campus);

(c) allow the transfer of up to 225,000 square feet of buildable area from the Lower Campus to the Upper Campus, which, if all 225,000 square feet are reallocated, would result in a maximum allowed density of 990,349 square feet for the Upper Campus and a reduction to permit 352,889 square feet of allowable development for the Lower Campus;

(d) to modify the noise standards applicable to the Property;

(e) delete a provision that required the City and Hoag to conduct a study of possible future improvements in and around the easterly end of the Semeniuk Slough, including a requirement that Hoag fund the study and potential future improvements in an amount not to exceed \$200,000; and

(f) incorporate the Second Amendment to the P.C. Text.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 1.5 of the Restated Development Agreement entitled *Planning Commission/City Council Hearings* is amended to read as follows:

“1.5 Planning Commission/City Council Hearings. The Planning Commission, after giving appropriate notice, held public hearings to consider a development agreement, the proposed Master Plan, and the EIR on December 5, 1991, January 9, 1992, January 23, 1992, February 6, 1992 and February 20, 1992. The City Council conducted public hearings on the Master Plan, this Agreement and the EIR on March 23, 1992, March 30, 1992, April 13, 1992 and May 11, 1992. The Planning Commission, after giving appropriate notice, held a public hearing to consider this Amendment, the Supplemental EIR, the General Plan Amendment, and the Second Amendment to the P.C. Text on January 31, 2008, February 7, 2008, March 6, 2008 and March 20, 2008. The City Council conducted a public hearing on this Amendment, the Supplemental EIR, the General Plan Amendment and the Second Amendment to the P.C. Text on April 16, 2008.”

2. Section 1.8 of the Restated Development Agreement entitled *City Ordinance* is amended to read as follows:

“1.8 City Ordinance. On February 14, 1994, the City Council adopted Ordinance No. 94-8 approving a Restated Development Agreement No. 5 incorporating certain provisions clarifying the role, review and approval authority of the California Coastal Commission for development of the Property to ensure consistency and compliance with the California Coastal Act. The Adopting Ordinance became effective on March 16, 1994. On May 13, 2008, the City Council adopted Ordinance No. 2008-10 approving

this Amendment and authorizing the City to enter into this Amendment. The adopting ordinance will become effective on June 12, 2008.”

3. Section 2.1 of the Restated Development Agreement entitled *The Adopting Ordinance* is amended to read as follows:

“2.1 The “Adopting Ordinance” refers to City Ordinance No. 94-8, adopted on February 14, 1994, by the City Council, which approved and authorized the City to enter into this Agreement. “Adopting Ordinance” further refers to Ordinance No. 2008-10 adopted on May 13, 2008 by the City Council, which approved and authorized the City to enter into this Amendment.”

4. Section 2.2 of the Restated Development Agreement entitled *Agreement* is amended to read as follows:

“2.2 “Agreement” refers to the “Restated Development Agreement Between the City of Newport Beach and Hoag Memorial Hospital Presbyterian,” and this Amendment.”

5. Section 2.13 of the Restated Development Agreement entitled *The EIR* is amended to read as follows:

“2.13 The “EIR” refers to final Environmental Impact Report No. 142 of the City of Newport Beach, and Supplemental Environmental Impact Report No. 142.”

6. Section 2.23 of the Restated Development Agreement entitled *Master Plan* is amended to read as follows:

“2.23 “Master Plan” refers to the Hoag Memorial Hospital Presbyterian Master Plan and Planned Community Development Plan which was adopted by the City on May 26, 1992 (Exhibit “C”), as amended.”

7. Section 3 of the Restated Development Agreement entitled *Conditions to Development* is amended to add a new paragraph after Subsection (f) to read as follows:

“Notwithstanding the provisions of this Section, any provisions set forth in this Amendment shall supersede and control over any inconsistencies with this Section.”

8. Section 3.3 of the Restated Development Agreement entitled *Program EIR* is amended to read as follows:

“3.3 Program EIR. Hoag acknowledges that the EIR is a “Program EIR” and includes Supplemental Environmental Impact Report No. 142. The EIR analyzes the impacts of construction phased over time and, pursuant to CEQA, City is under a continuing obligation to analyze Hoag’s requests for Project Specific Approvals to ensure the environmental impacts associated with the request were fully addressed in the EIR. Subsequent environmental documentation is required if this analysis reveals environmental impacts not fully addressed in the program EIR, identifies new impacts, or concludes the specific request is not consistent with the project described in the EIR. Hoag acknowledges the right and obligation of the City and the Coastal Commission or its successor agency to impose additional conditions as the result of the subsequent environmental analysis required by CEQA.”

9. Section 4.1 of the Restated Development Agreement entitled *Right to Develop* is amended to read as follows:

“4.1 Right to Develop. Subject to compliance with the provisions of Sections 3 and 8.2, Hoag shall have a vested right to develop and receive Project Specific Approvals for construction on the Property to the full extent permitted by the Master Plan, as amended. Subject to the provisions of Sections 3 and 8, City shall only take action which complies with and is consistent with the Master Plan, as amended, the Restated Development Agreement and this Amendment unless Hoag otherwise consents in writing. Subject to this Subsection, City shall have the authority to impose only those Exactions which are specifically described in this Agreement, except as expressly required (as opposed to permitted) by state or federal law.”

10. Section 5.2 of the Restated Development Agreement entitled *Mitigation Review* is amended to read as follows:

“5.2 Public Hearing. The Annual Review shall be conducted at a public hearing noticed in accordance with the provisions of Chapter 15.45 of the Newport Beach Municipal Code. Annual reviews should be scheduled in April of each year.”

11. Section 5.4 of the Restated Development Agreement entitled Mitigation Review is amended to read as follows:

“5.4 Mitigation Review. The annual review shall include a detailed report of compliance with the various conditions and mitigation measures contained within the mitigation monitoring plan. The report shall also include a noise regulation compliance assessment that includes noise measurements prepared by a qualified noise consultant on a yearly basis. The noise assessment shall identify noise regulation compliance issues and recommended measures to abate any noncompliance. The report shall include an analysis of the view impacts of buildings constructed in comparison to the anticipated views as depicted in the EIR. Hoag shall be found in compliance with this Agreement unless the City Council determines, based upon the evidence presented at the Annual Review, that Hoag has not complied with all mitigation measures and conditions including those imposed as a result of subsequent environmental analysis, applicable to the grading of, or building on, the Property as of the date of the Annual Review. Hoag shall pay the City administrative costs incurred in conducting Annual Reviews. Hoag shall reimburse the City for costs incurred by the City associated with Fluor Enterprises’ review of the cogeneration plant during the 2008 Annual Review.”

12. Section 8.2 of the Restated Development Agreement entitled *Exactions* is hereby amended to delete Subsection (c), which reads as follows:

“(c) City and Hoag shall conduct a study of possible future improvements in and around the easterly end of Semeniuk Slough that would, among other things, improve the appearance of the area and, potentially, serve as a component to improve public access from residential areas in West Newport to park land and public recreation facilities proposed in conjunction with development of the West Newport Oil Company property. The study shall analyze, among other things, the type of improvements that would improve the area without adversely impacting wetlands, the possible location of pedestrian trails and the potential for those trails to improve access to proposed recreational facilities, phasing of the improvements, potential public benefits, and the cost of the improvements. As a part of the study, Hoag and City shall meet and confer with resource agencies relative to the type and extent of improvements that may be permitted in or adjacent to wetlands. Hoag shall fund the study and participate in the cost of constructing any improvements in the area that the City Council determines are feasible and in the public interest, provided, however, the financial contribution of Hoag, including the costs of the study and improvements, shall not exceed Two Hundred Thousand Dollars (\$200,000.00).”

13. Section 8.2 of the Restated Development Agreement entitled *Exactions* is hereby amended to renumber Subsection (d) to Subsection (c); and to add a new Subsection (d) to read as follows:

“(d) City and Hoag acknowledge and agree that the Restated Development Agreement and this Amendment confer private benefits on Hoag that should be balanced by commensurate public benefits in favor of the City. Accordingly, the City and Hoag intend to provide consideration to balance the private and public benefits by the imposition of a Development Agreement Fee, which fee shall be used to reimburse the City for public improvements in the area and to fund certain additional needed public improvements identified by the City. Hoag shall pay to the City a Development Agreement Fee of Three Million Dollars (\$3,000,000). Payment of one-half of the Development Agreement Fee of \$1.5 million shall be made upon the Effective Date of this Amendment. Payment of the remaining one-half of the Development Agreement Fee of \$1.5 million shall be paid to City 12 months from the Effective Date of this Amendment or at the time of issuance of the first building permit by the City for development of a project on the Upper Campus as provided in Exhibit “C” attached to this Amendment, whichever occurs earlier.

The first \$1.5 million of the Development Agreement Fee shall be used to reimburse the City and/or pay for the costs associated with the following projects: (i) construction of the Superior Avenue medians extending from Ticonderoga Street to Dana Road; (ii) construction of the right-turn pocket for southbound Newport Boulevard to westbound Hospital Road; and (iii) funding of the operational improvements and traffic signal upgrade at the Hospital Road and Placentia intersection (“Priority Public Improvements”). Construction of the first two Priority Public Improvements listed above occurred during 2007, and the third is anticipated to occur in 2008. The City shall be obligated to pay the actual cost difference, if any, for construction of these Priority Public Improvements. However, if there are any funds remaining after construction of the Priority Public Improvements is completed, the City may retain the funds to be used for other City projects or services that benefit the public. The City shall also have the sole authority to decide the design, cost and scope of the Priority Public Improvements and the sufficiency of City’s performance on the Public Improvement Projects shall not be subject to Hoag’s approval.

The balance of the Development Agreement Fee (\$1.5 million) and any funds remaining after the construction of the Priority Public Improvements shall be used by the City in the City’s sole discretion to

offset costs associated with other City and community projects or services that benefit the public such as, among other things, public parks (for example, Sunset View Consolidated Park), landscaping improvements adjacent to public right of ways, sound abatement programs, public buildings, public road improvements, water quality improvements, law enforcement, fire fighting, emergency preparedness and other public safety facilities.”

14. A new section, Section 8.3, shall be added to the Restated Development Agreement entitled *Sales/Use Tax Origin*, to read as follows:

“8.3 Sales/ Use Tax Origin

(a) Hoag will include in its general contractor construction contract a provision that Hoag’s general contractor and subcontractors, to the extent allowed by applicable law, will obtain a Board of Equalization sales/use tax subpermit for the jobsite at the Project Property and allocate all eligible sales and use tax payments for individual contracts over \$5 million to the City. Hoag will provide Hoag’s general contractor and subcontractors with the name and contact information of the City’s Revenue Manager and notice of the Revenue Manager’s availability to meet and confer with them on the implementation of the Board of Equalization sales/use tax subpermit procedures. Hoag will further include a notice in its general contractor construction contract that prior to beginning a qualified construction project, the general contractor and subcontractors are encouraged to meet with the City’s Revenue Manager to review the process to be followed with respect to sales and use taxes. Hoag will further include a provision in its general contractor construction contract that the general contractor or subcontractors will certify in writing that the person(s) responsible for filing the tax return understands the process of reporting the tax to the City and will follow the guidelines set forth in the relevant sections of the Sales and Use Tax Regulations. Hoag shall not be responsible for failure of Hoag’s general contractor or subcontractors to follow the procedures set forth in this Section.

Hoag, if readily available, shall provide to the City or any City designated representative the names, addresses, phone numbers and contact name of the general contractor and all subcontractors.

(b) Hoag will continue to follow the Direct Payment Permit Process established in the Revenue and Taxation Code and use the permit for all qualifying individual purchases in excess of \$100,000 so that the local share of its sales/use tax payments is allocated to the City as the point of sale.

(c) It is understood and agreed that any fixtures, materials and equipment with a purchase total that exceeds \$100,000 purchased directly by Hoag and shipped to Hoag's Newport Beach location may also be eligible for direct allocation of sales/use tax to the City. Upon request of the City, Hoag will provide City on a semi-annual basis with a list of purchases exceeding the \$100,000 threshold during the preceding six-month period, including the amount of the purchase and, if readily available, the name and contact information for the vendor upon request by the City. The City agrees to review the semi-annual list of purchases made by Hoag and advise Hoag of any missed opportunities for direct allocation. Hoag agrees to file its Direct Payment Permit with vendors identified by the City in an effort to improve the direct allocation of the local share of sales/use tax payments in future periods."

15. A new section, Section 8.4, shall be added to the Restated Development Agreement entitled *Sunset View Park Improvements*, to read as follows:

"8.4 Hoag shall reimburse the City up to \$ 150,000 for the installation of groundcover, shrubs and irrigation systems within the unimproved portion of Sunset View Park and Superior Avenue, approximately 20,500 square feet in area, located northerly of the cogeneration building. Reimbursement to the City shall be within 30 days of Hoag receiving an invoice from the City."

16. A new section, Section 8.5, shall be added to the Restated Development Agreement entitled *Cogeneration Plant Energy Curtailment*, to read as follows:

“8.5 Hoag shall install a weather station capable of identifying ambient conditions necessary in documenting cogeneration plant and cooling tower operations. The weather station shall be tied into the cogeneration plant controls in order to maximize automatic responses to prevailing weather conditions, assisting in managing the operational changes and load shifting, as well as to provide periodic reports on plant operations.

Hoag shall not construct or erect additional cooling towers within the Hoag Lower Campus.

Hoag shall reduce the effective heat rejection by 33% at the existing cooling towers and such reduction shall be measured from a baseline (to be measured at the cooling towers) of operating three existing generators and absorption chillers at 100% of design capacity.

This reduced capacity operation shall be implemented daily between November 1st and April 30th, between the hours of 7:00 AM and 7:00 PM when the relative humidity is equal to or above 60% and when ambient temperatures are equal to or less than 55 degrees Fahrenheit.

17. Section 11.1(c) of the Restated Development Agreement entitled *Notices* is hereby amended to delete:

“with a copy to: Tim Paone
Paone, Callahan, McHolm & Winton
19100 Von Karman, 8th Floor
P.O. Box 19613
Irvine, CA 92713-9613”

and to add:

“with a copy to: Dennis D. O’Neil
Hewitt & O’Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612

with a copy to: Gary McKitterick
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, CA 92614-7321”

18. A new Section 11.17 shall be added to the Restated Development Agreement as follows:

“11.17 Indemnification/Hold Harmless. To the fullest extent permitted by law, Hoag shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of this Amendment, including, but not limited to, the approval of the Planned Community Text and/or the City’s related California Environmental Quality Act determinations, the certification of the Supplemental Environmental Impact Report, the adoption of a Mitigation Program, and/or statement of overriding considerations for this Project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Hoag, City, and/or the parties initiating or bringing such proceeding. Hoag shall indemnify the City for all of City’s costs, attorneys’ fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Hoag shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.”

19. Exhibit C of the Restated Development Agreement shall incorporate the First Amendment to the P.C. Text as part of this Second Amendment to the P.C. Text in revised Exhibit C entitled:

"HOAG MEMORIAL HOSPITAL PRESBYTERIAN

PLANNED COMMUNITY
DEVELOPMENT CRITERIA
AND
DISTRICT REGULATIONS

Recommended for Approval
by the Planning Commission
March 20, 2008

Adopted by the City Council
City of Newport Beach
Ordinance No.2008-10
May 13, 2008"

20. Except as provided for in this Amendment and not otherwise superseded by this Amendment, the provisions set forth in the Restated Development Agreement, all of the other terms, conditions, provisions and exhibits of the Restated Development Agreement continue to have full force and effect as provided therein and this Amendment shall constitute an integral part of the Restated Development Agreement. Exhibits A through C constitute a part of this Amendment and are incorporated into this Amendment in full by this reference.

21. In the event there is any conflict between any provision of the Restated Development Agreement and this Amendment, the later approved and recorded document shall prevail in interpretation, operation and implementation.

22. The City Clerk shall cause a copy of this Amendment to be recorded with the Office of the County Recorder of Orange County, California within ten (10) days following the effective date of adoption of the Ordinance approving this Amendment.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Development Agreement No. 5 to be binding as of the Effective Date.

CITY:

THE CITY OF NEWPORT BEACH, a municipal corporation of the State of California

By: _____

Edward D. Selich, Mayor

ATTEST:

LaVonne M. Harkless

LaVonne Harkless, City Clerk



APPROVED AS TO FORM:

Robin Clauson

for Robin Clauson, City Attorney

OWNER:

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN, a California nonprofit public
benefit corporation

By: _____

Richard F. Afable, M.D.
President and CEO

(All Signatures to be Notarized)

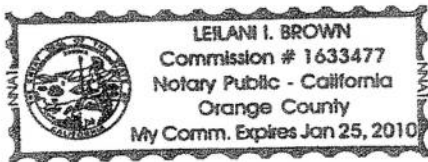
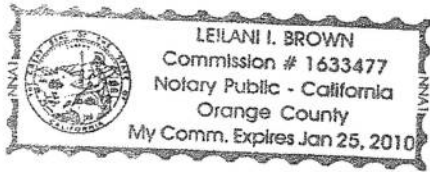
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ORANGE

On JUNE 11, 2008 before me, LEILANI I. BROWN, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared EDWARD D. SELICH
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Leilani I. Brown
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On May 19, 2008 before me, Debora HAMES, Notary Public
(Here insert name and title of the officer)

personally appeared Richard AFable

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Debora HAMES

Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Amendment to Restated Development
(Title or description of attached document)

Agreement No. 5
(Title or description of attached document continued)

Number of Pages 33 Document Date 5-19-08

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☒ Corporate Officer
President And CEO
(Title)
☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ✦ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ✦ Indicate title or type of attached document, number of pages and date.
 - ✦ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document